Filed 12/12/16 In re S.F. CA4/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re S.F. et al., Persons Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. CHERYL H., Defendant and Appellant.	G053401 (Super. Ct. Nos. DP026019, DP026020) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gary G. Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Motion to take additional evidence and request to augment the record. Granted. Order affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Plaintiff and Respondent.

* * *

Cheryl H. (mother) appeals from the juvenile court's order following the six-month review hearing (Welf. & Inst. Code, § 366.21; all statutory citations are to this code) concerning her daughters S.F. (born March 2005) and M.F. (born October 2006). Mother contends the juvenile court erred in declining to return the children to her care, and the court did not comply with the Indian Child Welfare Act (ICWA). For the reasons expressed below, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

In our prior opinion we described the factual and procedural background leading to the juvenile court's intervention with the family and rejected mother's appeal from the dispositional judgment. (In re S.F. et al. (Jun. 21, 2016, G052753) [nonpub. opn.].) We affirmed the juvenile court's findings mother's continuing care of her children posed a substantial risk they would suffer serious physical harm or illness in mother's custody based on mother's mental illness, delusions, and paranoia. Mother had a longstanding pattern of neglectful behavior towards her children, including more than 20 prior child welfare contacts between 1997 to 2015. She had received voluntary services during this period yet continued to engage in neglectful behavior. In January 2015, she signed a safety plan, agreeing to enroll the children in school – they had never been enrolled in school or properly homeschooled – and arrange medical and dental appointments. She failed to follow through on the safety plan, ostensibly to protect the children from threats posed by an older sibling or paternal relatives. Mother kept the girls secluded and out of school, which a court-appointed psychologist later determined had been "devastating" to their emotional health. In March 2015 Mother failed to appear with the children in court, and then refused to comply with the service of warrants in May

2015. In the culminating incident, mother directed one or both of the children to wield a weapon in the presence of police officers. The juvenile court found this was "incredibly dangerous" and "could have resulted in the serious injury or even death of these children."

The court ordered reunification services and conducted a six-month review on March 22, 2016. The social worker, mother, and the children's adult half-sibling K.H. testified. The court found mother had not regularly participated or made substantial progress in the case plan, and return of the children to mother would create a substantial risk of detriment to their physical or emotional well-being. The court also ordered a psychiatric evaluation for mother, and treatment as necessary.

II

DISCUSSION

A. *Substantial Evidence Supports Juvenile Court's Finding Return of the Children to Mother Would Pose a Substantial Risk of Detriment*

Mother contends the juvenile court erred in finding return of the children to mother's care at the six-month review would create a substantial risk of detriment to the children's safety, protection, or physical or emotional well-being. Mother's claim lacks merit.

1. Factual Background

In her initial report for the six-month review, the social worker described mother's cooperation, effort, and progress with the case plan as "minimal." The social worker expressed "concerns regarding mother's ability in managing Court ordered

services." Mother had not enrolled in parenting education.[1] She was consistently late to monitored visits, and discussed inappropriate topics with her children, such as her fears about the children's welfare, which distressed and worried them. She was "dismissive" of the monitor's attempts to redirect the conversation in a more positive vein.

Mother missed appointments with the social worker. She also missed therapy appointments despite confirming she would attend. The therapist did not believe mother was delusional, as the section 730 evaluator had diagnosed before the dispositional hearing,[2] but she felt mother had fears and anxieties that mimicked a delusional disorder. Mother told the therapist she might come "across as angry and paranoid," but there was "truth to [her] madness." The therapist stated mother had a distrusting nature that created unrealistic fears and increased her anxiety.

According to the social worker, mother "continues to struggle with accepting [] responsibility" for the juvenile court's intervention. Although mother stated she wanted "to do whatever she need[ed] to" reunite with her children, she had trouble asking for help in dealing with her problems, and had difficulty navigating new situations and processing new information.

Physical exams revealed both girls had anemia, and required extensive dental work. Now in fifth grade, S.F. tested at second grade level because mother never sent her to school. She also had difficulty interacting with other children.

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[1] The social worker referred mother to a parenting program shortly after the disposition hearing in November 2015. Mother did not advise the social worker until January 29, 2016, the program did not offer classes in English. The social worker promptly provided an updated referral on the next work day. As of February 19, mother had not provided the social worker with evidence she had enrolled.

[2] In her report dated August 31, 2015, Dr. Martha Rogers evaluated mother under Evidence Code section 730 and addressed whether mother suffered from developmental disabilities or psychiatric dysfunctions that interfered with parenting capacity. Rogers concluded mother was "[c]learly . . . suffering from Delusional Disorder, Persecutory Type, 297.1," and possibly "Borderline Personality Disorder, 301.7," and these substantially interfered with caring for her children.

M.F. had been diagnosed with attention deficit hyperactivity disorder (ADHD), and her physician referred her to a neurologist. A school psychologist concluded she fell far below average in several developmental categories and suffered from a learning disability. She presented as "much younger" than her chronological age, and needed constant redirection in completing tasks.

The girls' therapist stated both girls struggled with adjustment issues after being separated from mother. S.F. and M.F. had difficulty getting along and much of the disruption in the foster home came from their feuding. M.F. continued to have behavioral problems, but therapy had resulted in fewer aggressive incidents. Mother "appear[ed] to hold th[e] belief that the foster parents are the source of" problems the girls were having in their placement. But the caregivers reported the children's behavioral issues, which included fighting, swearing and making threats, "were present from day one in placement."

Mother contested the social worker's recommendation to continue the matter to a 12-month review. In an addendum report, the social worker requested authorization for an Evidence Code section 730 evaluation to determine whether mother had cognitive delays or impairments. The social worker noted the foster parent reported she no longer could provide the level of care the children required to address their misbehaviors at home and in school.

Mother's therapist reported mother had not been attending her therapy sessions. The therapist felt the treatment goals were "too lofty" for mother and should be simplified. The therapist told mother she was "'nowhere ready for overnight visits'" and the therapist would have nothing positive to say about mother if called to testify. The therapist also told mother she was creating a rift between the siblings. The therapist noted mother failed to accept she had debilitating fears and anxieties that interfered with her ability to meet the needs of her children. The therapist was unsure whether it was "anxiety, a cognitive processing issue, or a combination of both," and recommended

another evaluation for mother because "there is impairment in the mother's ability to think abstractly and also, it is difficult to assess the mother for an accurate diagnosis when she is in denial."

At the six-month review in March 2016, the social worker testified mother did not return the social worker's phone calls and e-mails concerning appointments, and to speak to mother she had to attend mother's visits with her children. Although it was a mistake to refer mother initially to a Spanish language parenting class in November 2015, mother did not advise the social worker of the problem at their December 30, 2015, meeting. The social worker explained how mother could get a waiver of fees for the parenting class, but mother did not respond. Dr. Rogers, the prior Evidence Code section 730 evaluator, had recommended mother meet with the children's therapist to gain a better understanding of their developmental and emotional needs, but the social worker felt the case had not progressed to that point based on mother's lack of progress in her own therapy. Mother still denied any abuse or neglect had occurred and denied she had mental health problems preventing her from properly caring for her children. The social worker testified Mother recently had gone "downhill in therapy," and the therapist expressed concerns about mother's "cognitive capacity and abilities [] as well as her anxiety levels. . . . [Mother had] retreated to [in the social worker's words], I'm a good parent. I provided for my children's needs and I don't understand why my children were taken from me." Mother was still not in parenting classes, so visits remained monitored.

The social worker believed the risk of reuniting mother with children remained "**HIGH**" (original boldface and caps) based on mother's inability to make scheduled appointments and mother's failure to recognize and act on her children's cognitive and developmental issues. Mother's unresolved mental health issues placed the children at risk, explaining mother "appears to become overwhelmed" and debilitated "in new situations." The social worker noted mother had not followed through with the adult half sibling's mental health care and was not adequately managing the maternal

grandmother's care. The maternal grandmother suffered from dementia, and mother and the adult half sibling K.H. lived in the maternal grandmother's home. The social worker worried about mother's ability to manage the stressors related to caring for a dependent adult and children who "need to . . . go to school, need to have their own therapy sessions, their own medical appointments."

The social worker also expressed concern about "the appropriateness of the parent-child role, that dynamic . . . . So it's not just appointments and follow-ups, it's about their relationship, parent-child relationship" that created a substantial risk of detriment, especially emotional detriment. Mother addressed inappropriate subjects with her young daughters, such as issues concerning therapy, for which they were developmentally unequipped and which could result in "parentifi[cation]." The social worker also had concerns mother caused the girls to become anxious by telling them things such as "thinking somebody was breaking into their home."

Mother testified the children were hurt and upset and did not understand why they could not come home. She felt they would be safe because she loved and cared for them and she wanted to be part of their lives. She was willing to take them to medical and other appointments and get them to school, explaining she now had her driver's license and things were more manageable. She continued to assert the paternal grandmother tried to take the children without permission, and asserted there was "nothing" in the sustained juvenile court petition she believed was true. She continued to blame her older daughter Erica for stealing documents that prevented her from enrolling the girls in school and for reporting her to SSA. Even though she did not agree with the sustained findings, she was willing to go to therapy, complete a parenting class and take the girls to therapy. Her home was in "okay condition" and she "cleaned up a lot of things.". If the girls were returned to her, she claimed she would have more incentive to comply with SSA's requirements.

The juvenile court found that returning the children to mother's care would create a substantial risk of detriment to their physical and emotional well-being. The court advised mother she should stop blaming her older daughter Erica for SSA's intervention and accept responsibility for her children's neglect. Mother needed to show she could get her children to school and take them to medical and dental appointments. The court directed preparation within a week of a revised case plan in consultation with mother's counsel and counsel for the children, and for SSA to follow "the prescribed procedure that [section 730 evaluator Dr. Martha Rogers] indicated in" her evaluation that would involve mother "in these activities . . . that she needs to be involved in so that she can demonstrate that she can do these things at some point in time."[3] The court wanted mother to "assume the responsibility of, actually, making the appointments . . . and setting up things with the educational system . . . ." The court advised mother to communicate and "be responsive to the [social] worker" and if she had problems with appointments she needed to let the worker know. The court also directed SSA to investigate whether there were resources for care of the grandmother so that mother and her son K.H. could participate in services together as recommended by Dr. Rogers. Finally, the court directed SSA to refer mother to a psychiatrist for an evaluation concerning her anxiety issues and treatment as necessary.

2. Legal Analysis

Mother challenges the sufficiency of the evidence to support the trial court's orders at the six-month review hearing. She asserts the juvenile court based its finding on mother's failure to enroll the children in school and to take them to medical or

[3] The juvenile court found SSA did not provide reasonable services. The court noted Dr. Rogers, the section 730 evaluator, had described the steps necessary for reunification, but the relatively inexperienced social worker had not incorporated the recommendations and instead focused on a "minimalist case plan" that did not give mother an opportunity to demonstrate she could make progress.

dental appointments before SSA's intervention. Mother also notes the social worker's concern mother should demonstrate a healthy parent-child role and not transmit her fears and anxieties to the children. Mother contends these "concerns . . . were all issues that could be readily addressed through family maintenance services with the minors duly returned to the home of the mother." She also argues the children's behaviors in the foster home were attributable to their separation from mother.

Section 366.21, subdivision (e)(1), provides "the court shall order the return of the child to the physical custody of his or her parent [at the six-month review] . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . . The failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." We review the record to determine whether the juvenile court's finding of detriment is supported by substantial evidence. (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1399; *In re Bernadette C.* (1982) 127 Cal.App.3d 618, 624 [appellate court reviews record in the light most favorable to the juvenile court's order and draws all reasonable inferences in support of its findings].)

The facts recounted above amply demonstrate the juvenile court did not err or abuse its discretion in declining to return the girls to mother at the six-month review. The record supports the social worker's opinion mother made minimal progress under the case plan. She had not enrolled in parenting education, and was often late to monitored visits with her children. She discussed her fears, which appeared to bear little relationship to reality, with the children, causing them to suffer stress and anxiety. Because mother seemed overwhelmed in caring for the maternal grandmother, the social worker expressed "concerns about mom's ability to manage her stress and to be able to provide for the children's needs consistently . . . ." She worried whether mother was able

to care for a dependent adult and children who "need to . . . go to school, need to have their own therapy sessions, their own medical appointments." The social worker noted mother had not followed through with K.H.'s mental health care. Mother missed appointments with the social worker and the therapist even after confirming she would attend. Mother undermined opportunities to make progress by failing to return the social worker's phone calls and e-mails, and rejecting the social worker's offer to come to mother's home.

The therapist reported mother failed to accept she had debilitating fears and anxieties interfering with her ability to meet the needs of her children, and she showed an impaired ability to think abstractly. Mother had difficulty navigating new situations and processing information, but would not ask for help. The therapist concluded she was "'nowhere [near] ready for overnight visits.'"

In her testimony at the six-month review, mother denied any abuse or neglect had occurred, and declared nothing in the sustained petition was true. She denied having mental health problems preventing her from being able to provide for her children. She continued to blame her older daughter Erica for stealing documents that prevented her from enrolling the girls in school, and for reporting her to SSA. Mother's testimony supported Dr. Rogers's opinion that mother's "insight or awareness into her own functioning is fairly limited . . . ." Mother refused to accept the necessity of the juvenile court's intervention and denied any responsibility for it.

Before the juvenile court intervened, the children's education and health care had suffered, and both girls lagged educationally. Although mother believed the foster placement was the source of the girls' behavioral problems, the caregivers reported the children's behavioral issues "were present from day one in placement." The girls' behavior was arguably attributable to the isolating existence they led before juvenile court intervention. Mother continued to address inappropriate subjects with her young daughters, apparently not comprehending her children were too young to cope with these

matters. As Dr. Rogers noted, mother viewed S.H. as her "little twin" and a "mother" figure. Dr. Rogers explained "'parenting the parent' is a feature seen in dynamics between children and parents where the children are aware of their precariousness with a parent who is very needy herself. They play a role in keeping the parental figure stable. That mother perceives [S.F.] as more mature suggests a problem in role reversal."

Although mother loved her daughters, and the girls wanted to return home, the record supports the juvenile court's conclusion that returning the children to mother posed a substantial risk of detriment. Mother admits she had not "seen to [her daughters'] education or routine" in the past, but asserts "these matters were readily cured, and indeed had been addressed entirely by the six-month review hearing through the intervention of [SSA]." We disagree. Although mother expressed willingness to take her daughters to school and to medical and other appointments, she had yet to demonstrate a capacity to follow through, as evidenced by the fact she continued to miss appointments and visits even without the added burdens of having the girls in her care. She also continued to express an unjustified fear the girls might be taken from school without her permission. This suggested she still harbored resistance to the idea of out of home schooling.

The juvenile court did not err in declining to order return of the children to mother's physical custody at the six-month review.

B. *Indian Child Welfare Act (ICWA)*

In our June 2016 opinion, we concluded SSA had failed to ask paternal relatives whether S.F. and M.F. might be Indian children. (25 U.S.C. §§ 1901 et seq., 1903 ["Indian child" means any unmarried person who is under age eighteen and is either a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe]; 1912, subd. (a) [where court knows or has reason to know an Indian child is involved, Indian child's tribe must be notified by

registered mail with return receipt requested]; §§ 224.1, subd. (a), 224.3, subd. (a).) SSA conceded its ICWA notices preceded contacts with the deceased father's biological relatives, and it made no further inquiries after receiving information the children's father had Indian ancestry. We reversed the court's finding ICWA did not apply, and directed the court to order SSA, if it had not done so already, to ask paternal relatives whether Louis had Indian heritage and to notify any tribes and Bureau of Indian Affairs (BIA) as necessary.

According to the social worker's March 17, 2016, addendum report, the ICWA social worker interviewed the paternal aunt on March 1, 2016, while the prior case was on appeal. The aunt provided information from the family that they may have a tribal affiliation with the Tunica-Biloxi Tribe of Louisiana, but she did not know of any relatives registered with the tribe. The ICWA worker documented the information on the appropriate form (ICWA-030 "Notice of Child Custody Proceeding for Indian Child"), identifying the father, the paternal grandfather and the paternal great-grandfather by name, date and location of birth and death, and the tribe's name. SSA sent notices on March 4, 2016, by certified mail, return receipt requested, to the Secretary of the Interior, the BIA, the Tunica-Biloxi Tribe of Louisiana (Attn. Betty Pierite Logan and/or ICWA Representative).

The clerk's transcript contains a return receipt from BIA. There are no receipts from the other notice recipients, and there are no responses to the notice in the record. The juvenile court did not make any finding concerning the children's Indian status at the six-month review.

Mother contends the juvenile court erred in conducting the six-month review because "[n]o proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs, except for the

detention hearing . . . ." (§ 224.2, subd. (d).) As noted, the record does not contain proof of receipt by the tribe.[4]

SSA agrees "if viewed in isolation, the [juvenile] court ran afoul of ICWA by concluding the six-month review without confirmation of the 10-day notice period to the relevant tribe." But SSA notes the appeal from the dispositional judgment (G052753) was pending at the time of the six-month review hearing, and states this "renders any action on the present ICWA issues at best premature" because the "juvenile court, as is its responsibility, continued to conduct the relevant review proceedings and oversight [of the girls'] case while the dispositional appeal was pending. (See *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 259-260; see also *In re Ryan K.* (2012) 207 Cal.App.4th 591, 597-598.)" SSA notes the juvenile court received the ICWA inquiry and notice evidence "but made no further ICWA findings" and "there is no relevant finding or order to reverse on the present record." SSA asserts "Mother's challenge, and this Court's review, of any subsequent ICWA orders most appropriately lies from any ICWA findings and orders made from this Court's prior remand; at most, no reversal is required as to this or any of Mother's present claims, as a remand to comply with ICWA consistent with this Court's directions would suffice. (See, e.g., *In re Brooke C.* (2005) 127 Cal.App.4th 377, 383-385 [reversal is not required to correct ICWA notice error as to orders other than the termination of parental rights, with a limited remand for compliance deemed an appropriate remedy].)"

Mother does not suggest the juvenile court lacked jurisdiction to conduct the six-month review or that any orders are void based on a violation of section 224.2. (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467 [appellate court remands with

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[4] Mother did not object or seek a continuance of the six-month review in the juvenile court. A parent has standing to assert ICWA claims (*In re B.R.* (2009) 176 Cal.App.4th 773, 779-780), and ICWA error is generally not subject to forfeiture. (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 852.)

instructions to ensure compliance with ICWA but does not reverse the jurisdictional or dispositional orders where there is not yet a sufficient showing that the child is, in fact, an Indian child].) The only substantive issue mother raises in the current appeal is whether returning the children to her care would create a substantial risk of detriment to their physical or emotional health. She does not assert a violation of section 224.2 requires the court to return the children to her care. The juvenile court did not determine whether the children were Indian children. Assuming a violation of section 224.2, there is no reversible error. (*In re Autumn K.* (2013) 221 Cal.App.4th 674, 715.)

Mother also argues the official Web site of the Tunica-Biloxi Tribe of Louisiana (http://www.tunicabiloxi.org) reflects the modern tribe is comprised of Tunica, Biloxi, Ofo, Avoyel and Choctaw Native Americans, and this "poses a question as to whether the Choctaw tribe, or other of these tribes if federally registered, should also have been given notice in this case, and should have been the subject of inquiry under section 224.3." We disagree.

Neither ICWA nor any other authority requires SSA to conduct detailed investigations into the particular composition of a tribe, and then trigger notices to tribes other than those named by family members. Here, family members identified only the Tunica-Biloxi Tribe of Louisiana. Relying on that information, SSA complied with its statutory obligations and sent the proper notices to the relevant parties. Nothing else is required. (*In re Levi U.* (2000) 78 Cal.App.4th 191, 199 [no requirement for detailed investigation or to "cast about, attempting to learn the names of possible tribal units to which to send notices"].) Nothing in the record suggests the girls might be eligible for membership in these other tribes. If more information develops, SSA and the court presumably would notify those tribes. We discern no error on the record.

Finally, mother states the current Federal Register (March 2, 2016) shows a "new ICWA representative for the Tunica-Biloxi Tribe of Louisiana. (See, 81 Fed.Reg. 10887 (March 2, 2016): https://federalregister.gov/a/2016-04619.)" She notes, "As no

response letter from the tribe had been filed at the time of the six-month review hearing, it is questionable as to whether the notice to the tribe was properly addressed." ICWA notices are to be sent "to the tribal chairperson, unless the tribe has designated another agent for service." (§ 224.2, subd. (a)(2).) Here, the March 4, 2016, ICWA notice was addressed to the former agent Betty Pierite Logan, "and/or ICWA Representative" at the P.O. Box address listed in the latest BIA update. Notice to a named former ICWA agent "and/or ICWA representative" at the tribe's current address substantially complied with the notice requirement. (*In re N.M.* (2008) 161 Cal.App.4th 253, 268.) The notice assured receipt by "someone trained and authorized to make the necessary ICWA determinations." (*In re J.T.* (2007) 154 Cal.App.4th 986, 994.) No basis exists to direct SSA and the court to provide additional notice.

C. *Motion to Take Additional Evidence and Request to Augment Record*

SSA moves this court to take additional evidence of minute orders, an SSA court report, and other documentation filed with the juvenile court in July, August, and October 2016. (Code Civ. Proc., § 909; Cal. Rules of Court, rule 8.252(c).) SSA also asks us to augment the record with the same documents. (Cal. Rules of Court, rule 8.155.)

Exhibit A includes SSA's interim review report dated July 21, 2016, which documents SSA's ICWA efforts, including efforts to contact the Tunica-Biloxi Tribe, to that point in time. The report states SSA had received a signed return receipt ("green card receipt") from the tribe dated March 10, 2016, but had not received a response from the tribe. A minute order dated July 21, 2016, reflects the green card receipts were submitted to the court, and notice of hearing had been provided to all appropriate tribes.

Exhibit B includes a minute order from the 12-month review hearing dated August 23, 2016. The minute order notes ICWA documentation had been filed with the

court, notice of hearing was given to the BIA and all appropriate tribes, and ICWA did not apply.

Exhibit C includes SSA's ICWA tracking log, as well as a letter from the Tunica-Biloxi Tribe dated August 17, 2016, stating the children were not enrolled members of the tribe and were not eligible to become members. Exhibit D also includes a minute order dated October 4, 2016, reflecting the court filed the ICWA Tracking Log and tribal letter that date.

Mother opposes the motion and request as untimely, complaining that SSA seeks review of the July 21, 2016, August 23, 2016, and October 4, 2016, findings based on an inadequate record.

The exhibits reflect the tribe received notice of the six-month review on March 10, 2016, which was less than 10 days before commencement of the hearing on March 17, but more than 10 days before the proceeding concluded on March 22, 2016. (See § 224.2, subd. (d) ["[n]o proceeding shall be held until at least 10 days after receipt of notice by" the tribe].) The exhibits also reflect the tribe notified SSA in a letter the children were not enrolled or eligible to enroll, and the juvenile court ultimately found ICWA did not apply. The additional evidence moots mother's claims concerning ICWA arising from the six-month review, other than her claim SSA should have contacted of other possibly related tribes, which we rejected above. We do not read SSA's motion as an attempt to seek review of orders made after the orders appealed in this case, which we do not entertain in any event. We discern no prejudice caused by SSA's delay in filing the motion for additional evidence and request to augment. Accordingly, we grant the motion and request.

III

DISPOSITION

The juvenile court's March 22, 2016, findings and orders from the six-month review are affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.